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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,605	11/21/2003	Mitchell A. Friedman	009053/00022	3126
25223	7590	05/24/2006	EXAMINER	
WHITEFORD, TAYLOR & PRESTON, LLP ATTN: GREGORY M STONE SEVEN SAINT PAUL STREET BALTIMORE, MD 21202-1626			TRIEU, THERESA	
			ART UNIT	PAPER NUMBER
			3748	

DATE MAILED: 05/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/719,605

Applicant(s)

FRIEDMAN, MITCHELL A.

Examiner

Theresa Trieu

Art Unit

3748

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-13 and 26-36 is/are allowed.
- 6) ☒ Claim(s) 14-19 and 23-25 is/are rejected.
- 7) ☒ Claim(s) 20-22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Nov. 21, 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

This Office Action is responsive to the applicant's amendment filed on March 7, 2006.

Claim 1 has been canceled. Claims 3-36 have been added. Accordingly, claims 2-36 are pending in this application.

#### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "fluid motor rotatable motive element... *a screw*" recited in claims 3, 15 and 27; "*first and second fluid sources*" recited in claims 7, 18 and 26; "*a seal* for preventing leakage" recited in claims 8, 19 and 31, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will

be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term “may” renders the claim indefinite since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 14-19 and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knedlik (Patent Number 3,179,383) in view of legal precedent.

Regarding claims 14-16, as shown in Figs. 1-3, Knedlik discloses a blending pump, comprising:

a fluid motor having a fluid motor rotatable motive element (26) positioned within an open chamber on an interior of the fluid motor, fluid motor inlet and outlet ports (62, 70) in fluid communication with the open chamber, and a drive axle (40) affixed to the fluid motor rotatable motive element and extending through the fluid motor;

a fluid pump having a rotatable motive element (28) positioned within an open chamber on an interior of the fluid pump, and fluid pump inlet and outlet ports (76, 78) in fluid communication with the open chamber, the rotatable motive element of the fluid pump being operatively engaged to the drive axel (40); wherein the fluid motor rotatable motive element and the fluid pump rotatable motive element provide a proportional fluid flow through the fluid motor and the fluid pump; the fluid pump rotatable motive element being a gear (28). However, Knedlik fails to disclose the shape of the fluid motor rotatable motive element. It would have been an obvious matter of design choice to utilize the tapered motive element and the fluid pump rotatable motive element having variable geometries relative to one another, since it has been held that a change in the shape of the element involves only routine skill in the art. *In re Dailey*, 149 USPQ 47 (CCPA 1966) (see MPEP §2144.04).

Regarding claims 17-19 and 23-25, Knedlik further discloses at least one of the open chamber of the fluid motor and fluid pump (26, 28) is configured with at least one of a rounded configuration; a first fluid source (68) containing a pressurized first fluid being connected to the fluid motor inlet channel (60) and the fluid pump inlet channel being connected with a second fluid source (76); a seal for preventing leakage between the fluid motor open chamber and the fluid pump open chamber; the fluid pump being pivotally mounted to the fluid motor; a first drive train gear (28) being connected to the drive axle (40) and operationally engaged with a second drive train gear (28) connected to the fluid pump rotatable motive element by a pump drive axle.

***Allowable Subject Matter***

4. Claims 2-13 and 26-36 allowed.

5. Claims 20-22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments with respect to claims 2-36 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

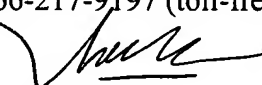
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Theresa Trieu whose telephone number is 571-272-4868. The examiner can normally be reached on Monday-Friday 8:30am- 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas E. Denion can be reached on 571-272-4859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TT  
May 19, 2006



Theresa Trieu  
Primary Examiner  
Art Unit 3748